



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

**[Docket No. DOT-OST-2022-0020]**

#### **Agency Information Collection Activities: Requests for Comments; Clearance of a New Information Collection(s): Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Requirements**

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 25, 2021. The deadline for submission of public comments expired on December 27, 2021. No public comments were provided. The Department of Transportation (DOT or Department) further invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection for the Department's Airport Concession Disadvantaged Business Enterprise (ACDBE) program. The DOT has the important responsibility of ensuring that firms competing for concession opportunities are not disadvantaged by unlawful discrimination. The DOT's most important tool for meeting this requirement has been its ACDBE program which is regulated by 49 CFR part 23 (ACDBE regulation) and is mandated by 49 U.S.C. 47107(e), originally enacted in 1987 and amended in 1992. The information collections described in this notice are necessary to maintain successful implementation of the ACDBE program, as it helps ensure recipients that receive Federal financial assistance from the Airport Improvement Program (AIP) of the Federal Aviation Administration (FAA) do not discriminate in the provision of opportunities for disadvantaged business enterprises in airport concessions. We are required to publish this notice in the Federal Register by the Paperwork Reduction Act of 1995, Public Law 104-13 (PRA).

**DATES:** Written comments should be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments [identified by Docket No. DOT-OST-2022-0020 through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
  - *Fax:* (202) 493-2251
- Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marcus England, (202) 267-0487, [marcus.england@faa.gov](mailto:marcus.england@faa.gov), Nicholas Giles, (202) 267-0201, [nicholas.giles@faa.gov](mailto:nicholas.giles@faa.gov) / Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR-4C), Federal Aviation Administration, 600 Independence Ave., SW, Washington, DC 20591, or Aarathi Haig, (202-366-5990), [aarathi.haig@dot.gov](mailto:aarathi.haig@dot.gov) / Departmental Office of Civil Rights (OST-S-33), U. S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, D.C. 20590.

**SUPPLEMENTARY INFORMATION:**

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including the accuracy of the estimated burden. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

In preparing this notice, the Department identified various aspects of the ACDBE program that have existed as requirements for a long period of time, several decades in some cases, that include information collections that have not been appropriately accounted for in the current collection. To assist in estimating the potential paperwork burden of these collections, the Department reached out

to a small number of stakeholders to obtain estimates of how much time they spend each year responding to these collections.

To help commenters provide information that will better allow the Department to include the appropriate paperwork burden within this collection, we offer the following clarifications: A “collection of information,” is defined as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons.” 5 CFR part 1320. The activities that constitute the “burden” associated with a collection are defined in 5 CFR part 1320 as “the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.” Importantly, this burden is not necessarily the same as the entire regulatory burden for a program or an aspect of a program. For example, if a regulation requires an inspection and the completion of a form documenting the inspection, the full regulatory burden would likely include both actions, while the paperwork burden would only include the time and other resources needed to complete the form.

In addition, the Department believes certain recordkeeping requirements have not been adequately accounted for in the current collection. As stated in 5 CFR part 1320, “Recordkeeping requirement means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to: (1) Retain such records; (2) Notify third parties, the Federal government, or the public of the existence of such records; (3) Disclose such records to third parties, the Federal government, or the public; or (4) Report to third parties, the Federal government, or the public regarding such records.” Thus, recordkeeping requirements can attach to records that are not necessarily covered by the PRA itself if, as in the ACDBE program, a requirement exists to maintain a complete case file. In that case, as the case file itself is not standardized, it would not be considered an information collection and the burden associated with developing the file would not be a paperwork burden. However, the requirement to keep that case file and, upon request, submit it to the Department, would be part of the paperwork burden.

For purposes of this 30-day notice, we have included the burden estimates we received from the small number of stakeholders we contacted. As noted above, the Department is concerned that at least several of these estimates contain burdens associated with aspects of the program that are not paperwork burdens. To the extent feasible, the Department requests that commenters who provide burden estimates for aspects of the program identified below be as specific as possible, including what amount of time each task takes and what, if any, additional costs beyond labor costs (e.g., copying, mailing, storage, or other technology costs) are associated with each aspect of the collection.

**OMB Control Number:** N/A

**Title:** Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Requirements

**Form Numbers:** N/A

**Type of Review:** Initial Approval of Existing Information Collection

### **1. Submission of ACDBE program to the FAA.**

Section 23.21 requires recipients to submit an ACDBE program to the FAA for approval. The FAA evaluates submitted ACDBE programs to determine whether they include all the provisions and measures required by the regulation. Timely submission and FAA approval of a recipient's ACDBE program are conditions of eligibility for FAA financial assistance.

Paragraph (d) of section 23.21 requires recipients that make any significant changes to their ACDBE programs to provide an amended program to the FAA for approval before implementing the changes.

The FAA received total annual burden hours from eight recipients, two of each hub size (nonhub, small, medium and large), ranging from 19 to 40 hours. The total annual cost burden was calculated based on the average of two recipients (small and medium hub size) responses ranging from \$1,600–\$15,000.

**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 396.

**Frequency:** Once, unless the recipient makes a significant change to its ACDBE program and is required to submit an amended program to the FAA for approval.

**Number of Responses:** 396.

**Total Annual Burden:** 11,088 hours and \$8,300 per respondent.

## **2. Annual Report on ACBE Participation.**

Section 23.27 requires recipients with approved ACDBE programs to submit a “Uniform Report of ACDBE Participation” (Uniform Report). The Uniform Report is collected electronically by the FAA from recipients annually and assists the FAA in conducting program oversight of recipients’ ACDBE programs, identifying trends or problem areas in the program, and ensuring that the ACDBE program is achieving its goal of encouraging ACDBE participation in concession-related opportunities.

The reporting requirements of the Uniform Report include the following information:

- overall percentage goals of ACDBE participation and their race-conscious (RC) and race-neutral (RN) components;
- new and continuing car rental concession opportunities and activity under the ACDBE program during the reporting period;
- total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services at the airport;
- number of lease agreements, contracts, etc., in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services;
- total gross revenues in each participation category for ACDBEs;
- total gross revenues attributable to race-conscious and race-neutral measures, respectively;
- overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN)

components of it; and

- The following information for each ACDBE firm participating in the ACDBE program during the period: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of the agreement, including options to renew; (4) Dates that material amendments have been or will be made to the agreement (if known); and (5) Estimated gross receipts for the firm during the reporting period.

The FAA received total annual burden hours from eight recipients, two of each hub size (nonhub, small, medium and large), ranging from 15 to 96 hours. The total annual cost burden was calculated based on the average of two recipients (small and medium hub size) responses ranging from \$5,000–\$10,000.

**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 396.

**Frequency:** Once per year.

**Number of Responses:** 396.

**Total Annual Burden:** 22,176 hours and \$7,500 per respondent.

### **3. Monitoring and Compliance Procedures.**

Section 23.29 requires recipients to implement appropriate mechanisms to ensure that all ACDBE program participants comply with the regulation's requirements. Recipients must include in their ACDBE programs specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means the recipient uses to ensure compliance. These provisions must include a written certification that recipients reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements, and monitored the work on-site at their airport for this purpose. If the FAA, as the Operating Administration, conducts a compliance review or investigation, it verifies whether the recipient has the written certifications and has monitored the work performed by ACDBEs; recipients do not otherwise submit the information. Recipients collect the information during on-site reviews of concession workplaces to determine whether ACDBEs are actually performing the work for which credit is being claimed.

The FAA received total annual burden hours from eight recipients, two of each hub size (nonhub, small, medium and large), ranging from 0 to 416 hours. The total annual cost burden was calculated based on the average of two recipients (small and medium hub size) responses ranging from \$20,000 –\$25,000.

**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 396.

**Frequency:** 36 times per year (3 times per month).

**Number of Responses:** 14,256.

**Total Annual Burden:** 60,588 hours and \$22,500 per respondent.

#### **4. Requirements for Submitting Overall Goal Information to the FAA.**

Congress carefully considered and concluded that race-neutral means alone are insufficient to remedy the effects of discrimination in concession opportunities. To meet Constitutional strict scrutiny requirements, ACDBE programs' race-conscious means must be narrowly tailored. Section 23.45 requires that recipients set and submit to the FAA an overall goal for ACDBE participation in concession opportunities every three years. The goal represents the ACDBE participation that would be expected in the relevant market area given the availability of ACDBEs. Subparagraph (d)(5) of section 23.51 requires recipients to include with their overall goal submission a description of the methodology they used to establish the goal. Recipients must also include a projection of the portions of the overall goal that they expect to meet through race-neutral and race-conscious means, respectively, and the basis for the projection. Paragraph (d) of section 23.25 requires recipients to maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures.

The FAA received total annual burden hours from eight recipients, two of each hub size (nonhub, small, medium and large), ranging from 0 to 120 hours. The total annual cost burden was calculated

based on the average of two recipients (small and medium hub size) responses ranging from \$5,000 –\$10,000.

**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 396.

**Frequency:** Annually.

**Number of Responses:** 396.

**Total Annual Burden:** 20,988 hours and \$7,500 per respondent.

## **5. Requirements Relating to Shortfalls in Meeting Overall ACDBE Goals.**

Section 23.57 requires recipients that do not meet their overall goal for ACDBE awards and commitments shown on their Uniform Report of ACDBE Participation (found in Appendix A to Part 23) at the end of any fiscal year to take the following steps in order to be regarded by the Department as implementing their ACDBE programs in good faith: (1) analyze in detail the reasons for the difference between the overall goal and the recipient's awards and commitments in that fiscal year; and (2) establish specific steps and milestones to correct the problems the recipient identified in its analysis and to enable the recipient to meet fully its goal for the new fiscal year. CORE 30 airports or other airports designated by the FAA must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under section 23.57 to the FAA for approval and must retain the analysis and corrective actions for three years. Recipients that are not a CORE 30 airport must retain the analysis and corrective actions in their records for three years and make them available to the FAA, on request, for their review.

The FAA received total annual burden hours from two recipients, one small hub airport and another medium hub size airport, ranging from 2 to 40 hours. The total annual cost burden was calculated based on the average of these two recipients (small and medium hub size) responses, ranging from \$80 –\$2,800.



**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 90.

**Frequency:** Annually depending on if the awards and commitments shown on a recipient's Uniform Report of ACDBE Participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year.

**Number of Responses:** 90.

**Total Annual Burden:** 1,890 hours and \$1,440 per respondent.

## **6. Requirements Relating to Approval of Long-Term, Exclusive (LTE) Agreements.**

Paragraph (a) of section 23.75 prohibits recipients from entering into "long-term, exclusive agreements" (LTE) for concessions without prior FAA approval, based on very limited conditions which are outlined in the regulation. This general prohibition is designed to limit the situation where an entire category of business activity is not subject to competition for an extended period of time through the use of an LTE agreement. Paragraph (c) of section 23.75 requires recipients to submit to the FAA various documents and information to obtain approval from the FAA of a long-term exclusive (LTE) agreement. The required information includes the following items:

- A description of the special local circumstances that warrant a long-term, exclusive agreement;
- A copy of the draft and final leasing and subleasing or other agreements with specific provisions;
- Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership;
- Documentation that ACDBE participants are properly certified;
- A description of the type of business or businesses to be operated *e.g.*, location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed;
- Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE; and
- Information on the estimated gross receipts and net profit to be earned by the ACDBE.

The collection of information under this section is necessary for FAA to carry out oversight responsibilities in determining whether special local circumstances warrant approval of an LTE agreement.

The FAA received total annual burden hours from eight recipients, two of each hub size (nonhub, small, medium and large), ranging from 0 to 20 hours. The total annual cost burden was calculated based on the average of two recipients (small and medium hub size) responses ranging from \$2,000 –\$5,000.

**Respondents:** Recipients of FAA grants for Airport Development.

**Number of Respondents:** 7.

**Frequency:** Annually depending on the number of leases and/or contracts with prime concessionaires that are long-term, exclusive agreements and require FAA approval.

**Number of Responses:** 7.

**Total Annual Burden:** 2,376 hours and \$3,500 per respondent.

**AUTHORITY:** The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on March 15, 2022.

**Marc D. Pentino,**  
*Associate Director,*  
*Disadvantaged Business Enterprise Programs Division,*  
*Departmental Office of Civil Rights,*  
*Office of the Secretary,*  
*U.S. Department of Transportation.*

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